IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
August 18, 2005 Session

PAUL LOUIS GRATTON v. BERNADETTE JULIANA GRATTON

Appeal from the Chancery Court for Rutherford County
No. 03-7366DR Robert E. Corlew, III, Chancellor

No. M2004-01964-COA-R3-CV - March 28, 2006

In this divorce action, Husband appeals the trial court's allocation of residential time for couple's only minor child, and Wife appeals the division of marital property and related issues. We affirm the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENT, JR., JJ., joined.

Alfred H. Knight, Nashville, Tennessee, for the appellant, Paul Louis Gratton.

Helen Sfikas Rogers, Nashville, Tennessee, for the appellee, Bernadette Juliana Gratton.

OPINION

I. PROCEEDINGS BELOW

In September of 2003, Paul Louis Gratton ("Husband") filed for divorce, and Bernadette Julienne Gratton ("Wife") counterclaimed in November of 2003. The four (4) year marriage had produced one child, Ian, who was born in May of 2000.

While the divorce was pending, a Special Master's Report governed custody of the child. Under this arrangement, Husband and Wife were given alternating one-week residential time with the child. During this time while the divorce was pending, both parents lived in the marital residence.

In February and March of 2004, the trial court held a hearing on Husband's Complaint and Wife's Counter-Complaint. The trial court granted Wife a divorce on the ground of inappropriate marital conduct and named Wife as the child's primary residential parent, while Husband and Wife

had joint decision making authority. Among other things, Husband was awarded the business begun by the couple, a helicopter repair business known as UK Aero, Inc., and the marital residence where the business was located. Husband was ordered to pay Wife a cash settlement "as her division of the marital estate and spousal support" of $130,000. Of that amount, a lump sum of $95,000 was due within 60 days, with the remaining $35,000 to be paid in forty-eight (48) monthly installments of $730 beginning May 1, 2004.

Both parties filed Motions to Alter or Amend the residential schedule of the minor child, which were denied. At Husband's request, the trial court granted a partial stay pending appeal which stayed only Husband's obligation to pay one-half of the monthly $730 monthly payments.[1]

On appeal Husband's sole issue is the residential schedule for the child. Wife, on the other hand, appeals the trial court's decision about child support, division of marital property, the court's denial of a security interest to Wife in the residence to secure Husband's payment, denial of Wife's request to reduce to judgment Husband's installment arrearage, and the failure to award Wife attorney's fees.

II. TRIAL COURT'S OPINION

After the trial, the trial court filed a letter memorandum in which the court discussed at length the evidence introduced at trial and the court's rationale. The portions of the trial court's opinion pertinent to the issues on appeal are as follows:

> Before us is a divorce action where the parties have been married only a very short period of time, some four (4) years. The parties have one minor child, a struggling beginning business, an encumbered parcel of real estate which contains their home and their business, a number of old cars and some tools. Fortunately, they each have very supportive extended families, who have been of tremendous help financially. Neither party has demonstrated earning ability, and despite the contention which each present as to the other, we find that the earning potential for each which has been demonstrated, remains modest. Unfortunately, collectively, they have incurred or paid attorneys' fees equivalent to two years of income. The Wife is not working, and it appears that she has few job prospects in the immediate future, and no job prospects which would allow her to utilize her Master's Degree as an aeronautical engineer. The Husband continues to work at his business which, although one of nine or ten helicopter repair shops in the country approved by the Federal Aviation Administration, appears to us to be a second-rate company in this field for the reason that the evidence shows that each of the other repair shops also enjoys the very significant approval of helicopter manufacturers, which the parties' business does not enjoy.

[1] Although Husband was granted a stay pending appeal on this issue, his appeal does not challenge this award. On remand, the trial court should address this situation as it deems appropriate.

Both parties seek custody of the minor child. The Wife proposes that the Husband enjoy some 72 to 75 hours every other weekend, and four to six hours additionally, each week, while the Husband proposes an equal division so that the parties each spend one week with the minor child in an alternating pattern.

[Divorce]

Thus, as we analyze the matters presented to us, the first issue before us is whether a divorce should be granted, and if so to whom. Although candidly it appears to us that this is a case where the parties literally cannot afford to be divorced, they fortunately enjoy the financial support from extended families. When we examine the question of fault, it appears to us that both parties should be charged with fault in the dissolution of the marriage. The law requires us to consider the greater fault, and we find that the divorce should be granted to the Wife. Significant, particularly, is the Husband's poorly explained disappearance for one week while on the island of Crete.

[Custody and Child Support]

Next, we find that both parties should enjoy joint custody of the minor child, and all decisions should be equally made. To the extent that it is necessary that we determine which parent enjoys the position of being primary custodian, the Wife will be in this position. We agree with the Wife that the differences between the parties are such that the child should not spend one week at each residence. The circumstances surrounding each of the parties appear to be such that their homes will in fact be very different. The mother proposes that the father enjoy one night per week and 72 or more hours every other weekend, as stated above. We find that the child should stay with the parties on a two week cycle as follows: during the first week, the child will go from the father's home to the mother's home on Sunday evening at 6:00 p.m. Then on Tuesday evening, the father shall enjoy time with the minor child from the time the child concludes the school day until 7:30 p.m. On Friday evening, the father will enjoy time with the minor child from the time the child concludes school until Saturday at 6:00 p.m. Then the following Tuesday, the child will enjoy time with the father from the time the child concludes school until 7:30 p.m. Then on Thursday the father will enjoy time with the minor child from the time the child concludes school through Sunday evening at 6:00 p.m. Thus, each of the parents will have the opportunity to enjoy substantial periods of time with the child. Because of the father's extensive duties at his business during the week, we maximize his opportunity to spend quality time with the child during each weekend, while still allowing the mother some time to spend with the child also at least every other weekend. Likewise, each parent has the opportunity to enjoy time with the minor child during the week, although, for the sake of stability, the child spends the majority of time during the week with the mother while the mother, at least currently,

has more time than does the father. In making this decision, we have considered the various factors surrounding custody which the law requires us to consider. Most significantly, has been the fact that the evidence shows that the mother has been the primary caregiver for the minor child, although we have noted the substantial contributions of the father. The parties will divide the major holidays in accordance with the parenting plan suggested by the mother. Both parties agree that should further issues arise they should first attempt to resolve those questions through mediation. We will initially require that the father provide health insurance for the minor child, although we recognize his limitations in this regard, being self-employed. It is our hope that in the future, one or both of these parties may become employed in such a manner that health insurance is available to them at a reasonable rate. The father shall be responsible for the payment of child support in the amount of $325 per month, which we calculate to be fifteen percent of his net income of the $2,500 per month which we find he should make from his business. Initially, the mother is unemployed, and we find that the father should be entitled to claim the income tax deduction for the minor child. We find downward deviation from the Child Support Guidelines to be proper inasmuch as the father will spend more than thirty percent of the time with the child, and an even greater percentage of his non-school waking time. Should either parent have the need to travel either for business or in search of employment, the other parent should have the first opportunity to enjoy time with the child during that time. Holidays will be divided as the Wife proposes. Issues concerning mediation in the event of later problems will be treated as the Husband proposes in his parenting plan. Neither party is required to carry life insurance because of their limited means. After considering all of the evidence, we see no basis for the Court to retain the child's passport. Either party may of course be held in contempt for wrongfully denying the other the opportunity to be with the minor child as ordered by the Court.

[Residence]

Both parties seek to be awarded the marital residence. We believe that the situation proposed by the Wife is unworkable. She proposes that the house be awarded to her, but that the Husband be allowed to carry on his business in the building right behind the home. We agree with the Husband that in order legally to operate the business within the zoning requirements, he must reside in the residence, or the business must move. We also agree with the Husband that because there are no restroom facilities in the shed in which the business is operated, it is unreasonable to suggest that the Husband and his employees would work in the shed without access to the house. Thus, our choice is to award the house to the Husband or effectively to close the business. Given the fact that the business is the only income either of these parties have, our only alternative is to award the house to the Husband. The Husband will be responsible for repayment of the debt owed upon the real estate and the Husband must pay to the Wife a sum representing her half interest in the equity.

[Business]

The Husband further shall be awarded the business, which we find has a value of $65,000. We base this finding upon the limited amount of inventory and tools within the business, limited accounts receivable, and the circumstantial evidence from which we conclude that the business has developed some goodwill. The Husband will retain his pre-marital vehicles as his separate property, and the Wife will retain her vehicle as her separate property, although the Court recognizes that maintenance was performed on a number of these vehicles from marital funds. The Husband shall also retain the older Land Rover used in the business, and the 1995 Land Rover which has recently been acquired through an insurance settlement. The totaled Land Rover may be the property of the insurance company, but to the extent that it is owned by the parties, it should be sold, with the proceeds divided. The Husband will retain his two 401(K) plans which were developed prior to the marriage, and the Wife shall retain such plans as she may still have which are premarital.

[Monetary Award to Wife]

In our consideration of the division of property, we have also considered that each of the parties has expended numerous funds provided by extended family. The evidence shows that the Wife has expended more funds than has the Husband. She has variously suggested that she has brought $77,000 or $78,000 into the marriage which she owes to her family. She has also suggested an additional $23,000 which she brought into the marriage, and has also indicated that she has put nearly $200,000 into the business. Tracing these dollars within the proof presented has been difficult. Further, it is unfortunate that funds supplied by both of the extended families, and funds earned by the business apparently have been expended with comparatively little acquisition of capital assets. The Husband has suggested that he should pay to the Wife the sum of $95,500, based upon his calculation of the equity in the home of being $131,000, his value of the business at $20,000, and his value of the tools at $40,000. In fairness, it appears to us that the Wife should be entitled to a cash settlement in the sum of $130,000. The Husband has testified as to his ability to acquire $95,000 within some sixty days, through refinancing the house, securing loans from family members, and securing loans from a friend. We think it is appropriate to require the Husband to do this. The $95,000 hopefully can be used by the Wife in acquiring further housing. Additionally, the Husband then shall pay the sum of $35,000 in 48 monthly installments of $730.

[Attorney's Fees]

The Wife seeks further payment of counsel fees. We recognize that neither party has assets from which counsel fees of the magnitude which they have incurred can be paid. The Wife has secured assistance from her family and has paid her fee while the Husband's fees which are substantially lower than those incurred by the Wife remain partially unpaid. Each of the parties will have to pay their own counsel fees.

[Further Spousal Support]

The Wife further seeks spousal support. In light of the responsibilities which we have placed upon the Husband, we find further spousal support to be inappropriate, despite the need of the Wife. We contemplate that the Husband will have the responsibility, at least initially for paying to the Wife $730 per month for four years, as stated above, plus $325 in child support, plus his obligation to support the child nearly one-third of the time while the child is with him. Further, the Husband has the continued responsibility for making payments owed on the business and the home which the parties incurred during their marriage. Additionally, the Husband proposes to borrow some $95,000, and although some of this he testified will be interest free, repayment of that sum of money even without interest in any reasonable period of time will be expensive. Thus, in fairness, the Husband has no ability to pay. We recognize that the Wife will have difficulty meeting her needs on the limited amount of funds which we have provided to her from the Husband. It appears to us, however, that the Husband will experience an even greater financial difficulty. Thus, the Husband literally has no ability to pay spousal support.

Although not a subject of discussion between the parties during the pendency of the case, we have not lost sight of the fact that this was certainly a marriage of short duration. During the short duration, the parties have enjoyed the birth of their child, and they acquired real estate and started their business. In our division of assets and liabilities, however, we have considered a number of factors which the law requires that we consider, including the fact that this is a brief marriage.

III. RESIDENTIAL SCHEDULE

Father appeals only the portion of the trial court's decision governing the child's primary residence and visitation. The trial court divided the child's time with his parents into two week blocks. Mother is the primary residential parent, with Father having frequent visitation with the child as follows: a) every Tuesday afternoon after school until 7:30 p.m.; b) every Friday after school until Saturday at 6:00 p.m.; and c) every other weekend from Thursday after school until Sunday at 6:00 p.m.

Father argues that if the trial court had conducted the proper analysis regarding comparative fitness of each parent then the child would have more residential time with Father. Alternatively, Father argues that the trial court ignored the success of the alternating week arrangement imposed by the Special Master pending the divorce.

Because of the broad discretion given trial courts in matters of child custody, visitation, and related issues, and because of the fact specific nature of such decisions, appellate courts are reluctant to second-guess a trial court's determination regarding custody and visitation. *Parker v. Parker*, 986 S.W.2d 557, 563 (Tenn. 1999); *Nelson v. Nelson*, 66 S.W.3d 896, 901 (Tenn. Ct. App. 2001); *Gaskill v. Gaskill*, 936 S.W.2d 626, 631(Tenn. Ct. App. 1996)). Accordingly, this court will decline to disturb a parenting arrangement fashioned by a trial court unless that decision is based on the application of incorrect legal principles, is unsupported by a preponderance of the evidence, or is against logic or reasoning. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001); *Adelsperger v. Adelsperger*, 970 S.W.2d 482, 485 (Tenn. Ct. App. 1997). Further, our analysis is governed by directive that, "It is not the function of appellate courts to tweak a visitation order . . . . When no error is evident from the record, the trial court's ruling must stand." *Eldridge*, 42 S.W.3d at 88.

We have reviewed the evidence suggested by Husband to support his contention that he is a comparatively better parent. In large part, Husband relies on evidence regarding Wife's poor housekeeping and infrequent outbursts. While the evidence suggests that after the birth of the couple's child her housekeeping suffered, the evidence also showed that during this time she was spending considerable time helping Husband with their business, caring for an infant with cholic, and living in a disintegrating marriage.

The evidence showed that both parents have a warm, attentive and loving relationship with the child. To be sure, their parenting styles are different, but we cannot conclude based on the evidence that Father's parenting is superior and that he should have been named the primary residential parent. We find no basis for disturbing the trial court's award to Mother of primary residential placement.

With regard to Father's suggestion that the alternating week schedule in effect prior to the divorce should remain, we agree with the trial court that that arrangement was no longer appropriate. First, Husband and Wife no longer live in the same house. During the divorce, the court was forced to arrange a parenting schedule while the parties still lived in the same house that did not require them to cooperate with one another. The result was each parent was responsible for the child on alternate weeks. The evidence shows that while this arrangement lessened conflict between the parents, it was not necessarily the best arrangement in the longer term for the child. Second, the record clearly indicates, and the parties' agree, that Husband and Wife have very different notions of how to raise the child. The trial court found that a primary residential parent was needed for stability and that stability is best served by Mother since she has been the child's primary caregiver since birth. We see no basis for reversing that determination.

Both Mother and Father have expressed a desire to alter some of the details of the parenting arrangement. They each filed motions to alter or amend asking for specific changes. The trial court denied both motions and explained that whenever one parent is unable to care for the child during his or her residential time, the other should fill in and lost residential time should be made up. On appeal, the parties argue that the current arrangement hampers Father's ability to travel in his business and Mother's ability to plan weekend activities and trips with the child. The details of the arrangement they want us to alter would, in our opinion, amount to the type of "tweaking" the Supreme Court had admonished us to avoid. *Eldridge*, 42 S.W.3d at 88. We decline to make those changes based on the record before us. Additionally, to the extent their requests for alterations are based on their experience since the divorce, the parties are free to ask the trial court for a modification of the parenting plan based on changed circumstances.

IV. CHILD SUPPORT AND DECISION-MAKING

Wife argues that the trial court erred in the following three respects regarding the child support award and the allocation of parental decision-making: (1) by giving Husband a downward deviation in child support, (2) in its finding about the amount of Husband's income, and (3) in granting Husband joint decision making about the child's education.

The trial court found Husband had a net income of $2,500 per month. The court included in its child support calculation a downward deviation since under the parenting arrangement ordered Father was to spend more than 30% of the time with the child resulting in an award of $325 in monthly child support. On appeal, Wife claims Father misses the arranged time with child and the child support issue should be remanded to review in light of changes occasioned by appeal of the visitation, changes in Father's income since the trial court order, and the time Father has spent with the child since the trial court's order.

With regard to changes in Father's income and his failure to exercise visitation, those are factual issues that arose after entry of the trial court's order. The trial court has had no opportunity to rule on them. Post judgment changes do not constitute a basis for reversal, and the trial court cannot be found in error since the facts did not yet exist at the time of the hearing. These issues may be addressed by a motion to modify child support, but are not properly raised on appeal.

Finally with regard to education, Wife maintains that since Husband is not contributing to the child's Catholic preschool tuition, then he should not have any voice on education issues. We find no basis for disturbing the trial court's allocation of decision-making.

V. MARITAL ESTATE

Wife argues that the trial court failed to equitably divide the marital estate, erred in failing to grant Wife a security interest in the home to secure Husband's financial obligations to her, and erred in failing to reduce to judgment Husband's arrearages in the monthly installment payment.

Upon the dissolution of a marriage, courts are called upon to divide the assets the parties accumulated during the marriage, upon the request of either party. The court's first task is to classify the parties' property as either separate or marital, because only marital property is subject to equitable distribution. *Flannary v. Flannary*, 121 S.W.3d 647, 650 (Tenn. 2003); *Eldridge v. Eldridge*, 137 S.W.3d 1, 13 (Tenn. Ct. App. 2002).

After identifying the marital property, the trial court is charged with equitably dividing, distributing, or assigning the marital property in "proportions as the court deems just." Tenn. Code Ann. § 36-4-121(a)(1); *Jolly v. Jolly*, 130 S.W.3d 783, 785 (Tenn. 2004). The court is to consider all relevant factors in its distribution, including those listed in Tenn. Code Ann. § 36-4-121(c).[2] *Jolly*, 130 S.W.3d at 786; *Flannary*, 121 S.W.3d at 650. The court may consider any other factors necessary in determining the equities between the parties, Tenn. Code Ann. § 36-4-121(c)(11), except that division of marital property is to be made without regard to marital fault. Tenn. Code Ann. § 36-4-121(a)(1).

The court's distribution of property is to be achieved by considering and weighing the most relevant factors in light of the unique facts of the case. *Batson v. Batson*, 769 S.W.2d 849, 859 (Tenn. Ct. App. 1988); *see also Flannary*, 121 S.W.3d at 605; *Tate v. Tate*, 138 S.W.3d 872, 875 (Tenn. Ct. App. 2003). An equitable distribution is not necessarily an equal one, and a division is not rendered inequitable simply because it is not precisely equal. *Robertson v. Robertson*, 76 S.W.3d 337, 341 (Tenn. 2002); *Cohen v. Cohen*, 937 S.W.2d 823, 832 (Tenn. 1996); *Kinard v. Kinard*, 986 S.W.2d 220, 230 (Tenn. Ct. App. 1998); *Word v. Word*, 937 S.W.2d 931, 933 (Tenn. Ct. App. 1996). Similarly, equity does not require that each party receive a share of every piece of marital property. *King v. King*, 986 S.W.2d 216, 219 (Tenn. Ct. App. 1998); *Brown v. Brown*, 913 S.W.2d 163, 168 (Tenn. Ct. App. 1994).

---

[2] These factors are:

(1) The duration of the marriage;

(2) The age, physical and mental health, vocational skills, employability, earning capacity, estate, financial liabilities and financial needs of each of the parties;

(3) The tangible or intangible contribution by one (1) party to the education, training or increased earning power of the other party;

(4) The relative ability of each party for future acquisitions of capital assets and income;

(5) The contribution of each party to the acquisition, preservation, appreciation, depreciation or dissipation of the marital or separate property, including the contribution of a party to the marriage as homemaker, wage earner or parent, with the contribution of a party as homemaker or wage earner to be given the same weight if each party has fulfilled its role;

(6) The value of the separate property of each party;

(7) The estate of each party at the time of the marriage;

(8) The economic circumstances of each party at the time the division of property is to become effective;

(9) The tax consequences to each party, costs associated with the reasonably foreseeable sale of the asset, and other reasonably foreseeable expenses associated with the asset;

(10) The amount of social security benefits available to each spouse; and

(11) Such other factors as are necessary to consider the equities between the parties.

Decisions regarding division of marital property are fact-specific, and many circumstances surrounding the property and the parties play a role. A trial court has a great deal of discretion concerning the manner in which it divides marital property. *Jolly*, 130 S.W.3d at 785; *Flannery*, 121 S.W.3d at 650; *Smith v. Smith*, 984 S.W.2d 606, 609 (Tenn. Ct. App. 1997). Appellate courts ordinarily defer to the trial court's decision unless it is inconsistent with the factors in Tenn. Code Ann. §36-4-121(c) or is not supported by a preponderance of the evidence. *Jolly*, 130 S.W.3d at 785-86.

Both parties agree that the business, UK Aero, Inc., and the residence are marital assets. After classifying property as marital or separate, the court's next task is to value the assets so that an equitable distribution can be accomplished. The valuation of a marital asset is a question of fact to be determined by considering all the relevant evidence. *Kinard*, 986 S.W.2d at 231; *Wallace v. Wallace*, 733 S.W.2d 102, 107 (Tenn. Ct. App. 1987). If the evidence the parties present as to value is conflicting, the trial judge may assign a value that is within the range of values supported by the evidence. *Powell v. Powell*, 124 S.W.3d 100, 105-06 (Tenn. Ct. App. 2003); *Ray v. Ray*, 916 S.W.2d 469, 470 (Tenn. Ct. App. 1995). On appeal, we presume the trial judge's factual determinations as to value are correct unless the evidence preponderates against them. Tenn. R. App. P. 13(d); *Jahn v. Jahn*, 932 S.W.2d 939, 941 (Tenn. Ct. App. 1996).

Determining the value of a closely held company is not an exact science. *Wright v. Quillen*, 909 S.W.2d 804, 809 (Tenn. Ct. App. 1995); *Wallace*, 733 S.W.2d at 107. A number of acceptable methods exist, and the court should chose an acceptable method that best fits the characteristics of the business at issue. "The choice of the proper method or combination of methods depends upon the unique circumstances of each corporation." *Id*.

Wife's primary objection to the division of property is that she and her family contributed $298,439 to the business and she is entitled to recover that amount The trial court noted and the record reflects that the business had few assets at the time of the divorce. Husband valued the business, at various times, between approximately $60,000 to $73,000. Wife valued the business at approximately $153,000. The trial court concluded it was worth $65,000. By any calculation, the alleged contributions to the business had been spent; they, in large part, no longer exist. The trial court is authorized to divide marital property that actually exists at the time of divorce. Tenn. Code Ann. § 36-4-121(b)(1)(A). *Davidson v. Davidson*, No. M2003-01839-COA-R3-CV, 2005 WL 2860270, at *4 (Tenn. Ct. App. Oct. 31, 2005). While the court may take into consideration the relative value of the spouses' contributions to marital property when determining the equity of a particular division, it cannot create assets that do not exist. *See Davidson v. Davidson*, 2005 WL 2860270, at *4.

Wife's second objection is to the actual valuation given to the business and residence by the trial court.[3] At the time of the marriage, Husband owned the residence valued at $180,000. While the couple was expecting their child, Husband retitled the property as joint tenants by the entireties. Although at trial Wife valued the house at $225,000, she also at trial introduced into evidence a summary of her request for division of property that listed the value of the house at $202,000. At trial, Husband valued the home at around $200,000, but he had submitted a summary prior to trial that listed the value of the house at $202,000. The trial court accepted the $202,000 value, subtracted the remaining mortgage of approximately $71,000, and determined the equity to be $131,000. The evidence does not preponderate against the trial court's determination of value.[4]

With regard to the business, the evidence shows that Husband is an aircraft and helicopter mechanic and Wife is trained as an industrial engineer. After Wife was laid off from her job and discovered she was pregnant, Husband and Wife began a helicopter/aircraft repair business at their residence known as UK Aero, Inc. The parties agreed that this arrangement would allow Wife to be a stay-at-home parent for a period of time. As found by the trial court, Wife and her family made substantial financial contributions to the business which, while the evidence is somewhat confusing, are not largely disputed.[5] It is likewise clear from the record that the fledgling business had few assets resulting from the capitalization. During the marriage, Wife acted as the business's administrator. Husband acknowledged that Wife set up the databases to conform to the FAA regulations, did clerical work, handled the business's financial matters, and prepared sales tax forms.

While UK Aero, Inc. is one of only nine companies that perform work on a particular make and model of helicopter, UK Aero, Inc. is FAA approved but not approved by the manufacturer. With regard to the business, the parties listed their valuations of its components, and their totals varied from $68,000 to $151, 200. The difference can be attributed to differing valuations given by each party for various components. For example, Wife attributed $20,000 to the workshop building in which the business was housed. That value was actually included in the marital residence valuation. Similarly, Wife valued the inventory at more that $50,000 more than Husband, but his figures were more recent than hers. The court found the value of the business to be $65,000. There is sufficient evidence to support the trial court's valuation.

---

[3] As found by the trial court, the business and residence are inextricably intertwined since the business is operated at the residence. Husband has the helicopter repair expertise and, pursuant to local zoning, he must reside there in order to use the residence for business purposes.

[4] Wife argues that, based on this valuation, she should have been awarded at least $65,500 (50%) for her interest in the residence. While the trial court technically divided the entire marital estate, not each separate component, Wife received the greater share of that estate, which implies she was awarded at least half the value of the equity in the house.

[5] It is undisputed that Wife contributed $70,000 of her funds to the business and that Wife and her parents loaned the business funds. The record is not clear how much of this amount has been repaid. Wife testified that her family loaned UK Aero significant amounts of money - over $200,000. She acknowledged that there were no notes evidencing the loans. Husband testified that he was not aware of a debt this large but that Wife handled the financial matters for the business. According to Wife, the total contribution in cash and loans she and her family made to the business is $298,439

Based on its valuations of the two assets, the trial court found the parties' marital estate totaled $196,000 and awarded Wife $130,000 or 66%. Under these circumstances, we find the trial court's valuation supported by the evidence and the distribution equitable.

VI. Lien on Residence and Arrearage Judgment

In her motion to alter or amend the divorce decree, Wife asked the court to grant her a lien against the marital home until the $130,000 awarded her in the property division is paid in full. Husband responded to this request by stating that such a lien would further diminish his opportunity to refinance the house as he was required to do in order to make the $95,000 lump sum payment ordered by the court. Without specific reference, the trial court denied Wife's request.

In its explanation of its rulings on the issues raised by the parties in their motions, the trial court did not explain its denial of the motion for a lien. The court did, however, express its concern over the precarious financial situation of both parties after the divorce. It appears to us this recognition of the needs and lack of financial resources of both parties, coupled with Husband's argument that such a lien would hamper his ability to comply with other parts of the order, provide the basis for the court's decision.

We find no basis for reversing the trial court's decision. In future proceedings, based on more current facts, the trial court may be convinced that a lien is necessary to secure Wife's interest.

After the notice of appeal was filed, Husband filed a motion for stay pending appeal of his monthly payments and Wife filed a motion to reduce to judgment Husband's arrearage in payment of the $730 monthly payment for the five months since entry of the decree. The trial court granted Husband a stay in part, staying one-half of the monthly payment pending resolution of this appeal. The court denied Wife's motion for an executable judgment, stating "the payment of said amounts being an issue on appeal."

At the hearing on the post-judgment motions, it was shown that Husband had paid the $95,000 lump sum payment within the time ordered by the court. Husband argued that the refinancing that was necessary in order to obtain the $95,000 had increased his mortgage payments such that he could not afford to pay those expenses, his child support and insurance, and $730 per month. The trial court again demonstrated its awareness of the difficult financial situation both parties faced. It strove to reach a fair outcome that would provide additional income to Wife beyond the $95,000 she had received but allow Husband to continue to operate the business.

We decline to find the trial court in error. As the court admonished the parties and as Husband acknowledged, Husband could be liable for any amounts unpaid with interest if the $730 monthly payment were upheld. Since Husband did not appeal that part of the trial court's judgment, the total amount remains payable. The most appropriate way to deal with this situation is to remand

the case to the trial court so that court can calculate the amount due and make appropriate orders for payment thereof.

VII. ATTORNEY'S FEES

Wife argues that the trial court erred when it failed to award her attorney's fees incurred during the trial court proceedings. Since attorney's fees are considered spousal support or alimony, an award of fees is subject to the same factors as in the award of any other type of alimony. *Yount v. Yount*, 91 S.W.3d 777, 783 (Tenn. Ct. App. 2002). Our Supreme Court had made clear that "[t]he allowance of attorney's fees is largely in the discretion of the trial court and the appellate court will not interfere except upon a clear showing of abuse of that discretion." *Aaron v. Aaron*, 909 S.W.2d 408, 411 (Tenn. 1995) (citations omitted).

As the trial court pointed out, neither of these parties would have been able to pursue this expensive divorce without family assistance. Given the financial situation of the parties, neither can afford their own fees without family assistance, much less contribute to the other's fees. We find the court was well within its authority to refuse to award Wife attorney's fees. While Wife may have a need for the fees, we agree with the trial court that, in view of the other obligations placed on him, Husband simply has no ability to pay Wife's fees. The same rationale applies to attorney's fees on appeal.

VIII.

The trial court is affirmed. Costs of appeal are taxed equally between the parties for which execution may issue.

_____

PATRICIA J. COTTRELL, JUDGE